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By PwC Deutschland | 17. September 2021

Belgian tax exemptions granted to multinational companies as selective state aid

In a most recent judgment, the European Court of Justice (ECJ) confirmed the findings of the EU Commission in a Belgian case, namely that local tax exemptions granted by way of tax rulings to multinational companies constitutes selective and thus illicit State Aid. With this, the ECJ sets aside the first-instance decision of the European General Court and refers the case back for further review on other aspects of the case.

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Background

Since 2005, Belgium has applied a system of exemptions for the excess profit of Belgian entities which form part of multinational corporate groups. Those entities were able to obtain a tax ruling from the Belgian tax authorities, if they could demonstrate the existence of a new situation, such as a reorganization leading to the relocation of the central entrepreneur to Belgium, the creation of jobs, or investments. In that context, profits regarded as being 'excess', in that they exceeded the profit that would have been made by comparable standalone entities operating in similar circumstances, were exempted from corporate income tax.

In 2016, the Commission found that that system of excess profit exemptions constituted selective (illegal) state aid which was unlawful and incompatible with the internal market and ordered the recovery of the aid thus granted from 55 beneficiaries, including the company Magnetrol International. Belgium and Magnetrol International brought an action before the General Court of the European Union seeking the annulment of the Commission's decision. On 14 February 2019, the General Court annulled the Commission's decision. The Commission then brought an appeal before the ECJ.

Decision of the ECJ

In its judgment, the ECJ notes that, for a state measure to be classified as an aid scheme, three cumulative conditions must be satisfied. First, aid may be granted individually to undertakings on the basis of an act. Secondly, no further implementing measure is required for that aid to be granted. Thirdly, undertakings to which individual aid may be granted must be defined 'in a general and abstract manner'. In its judgment the ECJ concludes that the General Court made several errors when interpreting and applying these criteria on the Belgian case.

However, the ECJ held that the state of the proceedings does not permit a final judgment as regards the pleas alleging, in essence, the incorrect classification of the excess profit exemption as State Aid. It therefore referred the case back to the General Court for further examination on those and other aspects of the case.

Source:

The ECJ case reference is **C-337/19 P** *Commission / Belgium and Magnetrol International* judgment of 16 September 2021; **ECJ press release No. 158/21**.

For a more comprehensive expert overview of the ECJ-judgment please refer to our **PwC EUDTG Newsalert** from 17 September 2021 (*CJEU decision in Belgian excess profits regime state aid case*) to be found **here**.

Schlagwörter

Belgian tax exemption, illicit state aid, tax rulings